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GOVERNMENT REGULATION OF BIG BUSINESS IN THE FUTURE

BY HENRY R. SEAGER, PH.D.,
Professor of Political Economy, Columbia University.

The problem of determining the effect of the Sherman law on the business of the country is like that of determining the effect of the protective tariff. We have had a protective tariff for nearly one hundred years, and at any time during that period, in many American communities, it has been possible to find one set of people who viewed it as the mainstay of our national prosperity and another set, equally able and well-informed, who considered it a national curse. It is not surprising, therefore, to find similar differences of opinion with reference to the newer question whether the trusts are a benefit or an evil. Viewing them as an evil, enthusiasts for their suppression have hailed the anti-trust act as the *Magna Charta* of the American business man. Seeing in them much that is good, defenders of the trusts have asserted, to quote from a recent address, that this act has cast on American business "a blight greater than the Civil War itself."

One reason for this diversity of view has been uncertainty as to what the law really means. Up to 1894 this uncertainty acted as a deterrent to the launching of new combinations, although it did not prevent old combinations, like the Sugar Trust, from reorganizing as New Jersey holding companies. The decision in the Knight case in that year—the first case under the act to be passed on by the Supreme Court—was believed at the time to render the law quite innocuous. The court held that the act could not be invoked to prevent a New Jersey corporation which already dominated an industry from still further strengthening its control by acquiring competing plants in another state. From this it was hastily concluded that monopolistic manufacturing combinations could not be interfered with under this federal statute. Mr. Moody, in his "Truth about the Trusts," presents a compilation which indicates how completely business men ignored the act during the years which followed this decision. Up to the time of the business depression

of 1893-97, only eighty-two combinations had been formed, with an aggregate capitalization of less than one billion dollars. From January 1, 1898, to January 1, 1904, two hundred and thirty-six combinations were launched, with an aggregate capitalization of six billion dollars. If further evidence were needed that the anti-trust act was considered a dead letter at this time, it is found in the decision of the government virtually to abandon all attempt to enforce it. During the entire four and a half years from March 4, 1897, to September 14, 1901, when Mr. McKinley was President, only three prosecutions were started under the law. One of these was against a local live-stock association, and the other two against coal associations of no great importance.

Mr. Roosevelt certainly deserves the praise, or blame, for having changed this situation. The first prosecution started in his administration was, to be sure, against a railroad combination, but the decision dissolving the Northern Securities Company, handed down in 1904, clearly foreshadowed what was to be expected by other holding companies which relied on their New Jersey charters to protect them from federal attack.

With this decision and the vigorous measures taken by the government to push other dissolution suits to a successful issue, the act again became a factor in the business situation. For the years 1904 to 1911, the description of the act as "a blight on the business of the country" is no exaggeration. It was brought home to hundreds and thousands of business men that if the sweeping condemnations of the statute were applied literally, and if "commerce among the states" was held to include all buying and selling across state lines, they were parties to criminal conspiracies and liable to severe penalties. The result was a state of anxiety and suspense which bordered on paralysis. The frequent declarations from Washington that the law would be enforced against rich and poor alike, and that malefactors of great wealth might expect no mercy, hardly tended to relieve this situation, when no large business man could know with certainty whether or not he was a malefactor. Even official declarations from the White House as to how the law was to be enforced and as to the distinction between good trusts and bad trusts were of little avail, because there was no guarantee that the views of the judges of the Supreme Court would coincide with those of the President.

This was the situation last May when the decisions dissolving the Standard Oil and American Tobacco combinations were at length rendered. The first effect of these unanimous judgments against the trusts was consternation. The worst had been feared and now the worst had happened. Further consideration brought reassurance. It soon became evident that property interests would be fully protected in the forms of dissolution that would be approved by the courts, and that few criminal prosecutions against trust organizers were contemplated. It is characteristic of the psychology of American business men that the slight ground for cheerfulness that these considerations would seem to afford has grown, month by month, as the dissolution of the two trusts immediately affected by the decisions has been accomplished without disaster, until now, notwithstanding many adverse factors, a small business boom appears to be beginning. The reasoning of the average business man seems to be as follows: "Anything is better than the uncertainty in which we have been living. The dissolution of the Oil Trust and the Tobacco Trust has not seemed to have hurt business in those fields. At any rate the aggregate securities of each combination are worth more now than they were before the dissolution. Applying this same kind of painless surgery to other trusts will not have much influence on the general business situation. We now know what we have to expect. The country is as big as ever, and it ought to be prosperous. We are tired of marking time, so let's start a business boom!"

Mr. Talbert evidently does not fully share the optimistic and expansive humor that has recently possessed Wall Street. Seeing below the surface, he appreciates that disruption of the trusts and insistence that they must stay disrupted must mean, as time goes on, that many of the advantages of combination will be lost to the country. His paper is an able defence of combinations and an able argument for a constructive policy of regulation, in place of the present negative policy of prohibition of the anti-trust act. I agree with him in his principal contentions in regard to the advantages of combinations, but I think he has overlooked some of the offsetting disadvantages, and I think he is open to the charge of shrinking from the conclusions that seem to be necessitated by his own argument.

I have had the curiosity recently to make a study of such information as is available in the financial press in regard to the business

success of the thirty largest combinations which were in existence before the Standard Oil Company and the American Tobacco Company were dissolved. Nearly all of these great industrials now publish annual statements in regard to their gross and net earnings. The dividend history of all of them is matter of public knowledge, and now, for most of them, extends over a period of a dozen or more years. It is thus possible, even without the inside information necessary to complete understanding, to form some judgment as to their success. The conclusion to which my study leads is that eight of them have been highly successful, seven of them have been fairly successful, ten of them have been unsuccessful, and five of them have been disastrous failures. I believe that a study of a larger number of the trusts would lead to a similar conclusion. Half of them, or nearly half of them, have failed to realize the expectations of those who organized them. If this has been the case, there must have been serious offsets to the economies of combination which Mr. Talbert has described. The chief of these offsets has been, I think, the failure of the responsible directors and officers, through inexperience, incapacity or downright dishonesty, to manage the vast interests entrusted to their care economically and efficiently. In other words, the economies of combination are secured not automatically, but only as the result of painstaking thought and unusual organizing ability. Some of the trusts have enjoyed the services of men of unusual organizing ability and this, together often with other advantages, has enabled them to prosper. Other trusts have been directed by men of only average business ability and integrity, and instead of prospering have lost ground in the fields of industry which they were intended to dominate. The important question for the future is, will the second generation of business managers which is now beginning to come upon the field be able to direct these vast aggregations of capital as the ablest of their predecessors have done? When we consider that these managers must be selected by directors, themselves chosen by widely scattered shareholders, I think it rather unlikely. And as success for a hundred million or thousand million dollar combination is dazzling, so failure must be on a sensational scale. There is no half-way between efficiency and inefficiency where each department depends so vitally on every other department. Either every branch of the business is quickened by the forceful and capable directing head or the hesitancy and mistaken

judgments of that head are communicated to every subordinate. It is right here that I believe we have the source of the persistence of competition, which Mr. Talbert seems to believe in but for which he offers no adequate explanation. The ablest and most self-reliant men, so long as the world's business continues to be carried on under private enterprise, will prefer to be their own men. Salaries, even princely salaries, will not hold them in positions of subservience to boards of directors, after they have amassed sufficient capital to start out in business for themselves. Thus I believe that under a system of fair competition the best business capacity will be found, in the long run, not among the salaried officials of the combinations but among the so-called independents. It is for this reason that I am quite disposed to agree with Mr. Talbert that the proper policy for the government to adopt toward the trusts is one of regulation to require a reasonable degree of publicity for the protection of investors and abstention from unfair and oppressive methods of competition for the protection of consumers against unreasonably high prices.

But suppose that Mr. Talbert's more extreme views in regard to the economies of combination shall prove to be right; suppose that these economies are found to be so considerable that, under the regime of free combination which he advocates, trusts will come to dominate different branches of manufacturing and mining, as semi-monopolistic railroad systems have come to dominate the transportation business of particular localities. Can we then accept his conclusion as to the limits to be imposed on governmental regulation? In speaking of the wastes involved in present methods of conducting retail trade, he says that the co-operative store would be the obvious solution of the problem, "but this leads dangerously towards socialism, the unsoundness of which is in that it tends to undermine and destroy the independence of individual effort and character." In other parts of his paper he gives evidence of the great savings effected through combinations, and of the great service they render in organizing business economically and efficiently, and yet he maintains that regulation of prices by the government, as Judge Gary has proposed, will be quite unnecessary. This is because, in his view, "persons and corporations using only such [i.e., fair and legitimate] methods in trade are entitled to all their profits whatever they may be, and are entitled to buy and sell at whatever prices they choose."

If the enormous economies which Mr. Talbert claims for combinations are real, what ground have we for expecting competition to persist? When the superior efficiency of the large combination is understood, who will be so foolish as to waste his capital by entering as a competitor a field in which competition is foredoomed to failure? And if giving free play to business enterprise leads logically and inevitably to combination, is there not danger that the margin between costs and prices will allow unreasonably large profits to the efficient combination? Does Mr. Talbert believe that railroads should be permitted to charge what rates they choose? If not, how can he logically oppose price regulation for combinations, if it be true that the economies made possible by their large scale operations put their smaller competitors at such a disadvantage?

And if the free play of competition leads to combination, what logical grounds have we for condemning the co-operative store or even state industry itself as "dangerously" socialistic? If his description of big business is correct, are we not moving toward a situation when most of us will inevitably be the employees of giant corporations? Does the policy which these giant corporations, the Steel Corporation, for example, adopt toward their employees tend less to "undermine and destroy the independence of individual effort and character" than would connection with a co-operative store or public employment? Logic seems to me to compel Mr. Talbert to look with a more friendly eye on what he now deems "dangerously" socialistic. Socialism has seemed dangerous in the past because we have been able to contrast it with a system of private industry and enterprise in which there were many employers as well as many employees, and in which the ambitious and capable employee might look forward confidently to becoming himself an employer. If the situation that lies before us is one in which giant corporations shall divide among them the industrial field, shall we not all prefer, so far as possible, to see the economies of combination secured through great co-operative enterprises, in which we may take part, or through an extension of governmental activities, in relation to which we shall be employees, to be sure, but public employees rather than the employees of private corporations? In making this suggestion, I am not unmindful of the circumstances that make a billion dollar corporation, like the Steel Trust with its two hundred thousand odd employees, highly efficient in comparison with a self-governing city

of two hundred thousand inhabitants. I am merely contending that employment by the latter can hardly be deemed to tend "to undermine and destroy the independence of individual effort and character" more than employment by the former. Other arguments than this will have to be urged against socialism, or its dangerous character will seem to the average citizen—an employee of a giant corporation in Mr. Talbert's industrial society of the future—purely imaginary.

I began this paper by comparing conflicting opinions in reference to the effect of the anti-trust law with conflicting opinions in reference to the protective tariff. The moral in both cases seems to me to be that as regards these great questions of national policy we are still in the realm of personal opinion rather than of demonstrable scientific truth. If this be true as regards the past and present effect of the anti-trust act, it is of course even more true in regard to the future. It is thus in no dogmatic spirit, but merely to make my position clear, that I proceed to restate my conclusions. Like Mr. Talbert, I have been impressed by the economies which some of the large combinations have effected. I share his opinion that wise governmental policy would permit business men to combine to secure these economies and that the prohibitions of the anti-trust act should extend not to all combinations, but only to combinations that restrain trade in unfair and oppressive ways. I agree that regulation to secure a reasonable degree of publicity and to prevent unfair and oppressive policies toward competitors should be substituted for sweeping prohibition, and that this can best be accomplished through a federal license system.

I also agree with him that the regulation of prices will probably prove unnecessary if fair conditions of competition are preserved, but not for the theoretical reason he urges. My notion is that in practice the economies of combination will be found to be balanced by the economies that the smaller producer who attends personally to the details of his smaller enterprise can introduce, and that, therefore, competition will continue to be a sufficient regulative force. This will be all the more likely if small producers are permitted greater freedom in organizing selling pools, as is the case in Germany, since it is chiefly in connection with the marketing of products that the economies of combination are conspicuous.

I am quite prepared, however, for the discovery that under a

regime of free combination the giant producer will, in certain industries, have such great advantages that competition will cease to be an active force, as it has so largely in the railroad industry. In this event, I should feel constrained to advocate government regulation of prices, just as most of us now advocate government regulation of railroad rates. Moreover, as regards such industries, if any there prove to be, I should feel that the choice between government regulation of prices and government ownership and operation could not be fairly based on the ground that one policy is more dangerously socialistic than the other. Government ownership and operation of railways is accepted as a matter of course in Germany, and Germans even believe that they can prove that their system is better than ours of private ownership and operation. Germany has also gone a good way toward actually controlling, if not completely owning and operating, some of the trusts, like the Potash Trust. As we succeed, as I believe we shall succeed, in purifying our politics and making government administration more efficient, the misgivings in regard to government enterprises, which we cannot but feel at present, may give way to the belief that monopolistic industries, especially industries like railroads where the public interest is large, should, as a matter of course, be owned and operated by the government. When that day comes, the proposal that the government take over trusts which have demonstrated their monopolistic character may not seem dangerously socialistic, but only reasonable and proper. I do not believe, as I have already said, that many trusts will show a monopolistic character, even though the fullest liberty be given to the combination movement. It is for that reason, however, and not because I believe that public employment will tend more "to undermine and destroy the independence of individual effort and character" than employment by a private monopolistic corporation that I do not look forward to an indefinite extension of state industries.